

# EXHIBIT C

Anastassiou & Associates  
Attorneys at Law



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Salinas, CA 93901  
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Tel. (831) 754-2501  
Fax: (831) 754-0621  
January 22, 2008

Pismo Beach Branch Office

1035 Longview Avenue  
Pismo Beach, CA\*  
Tel. (805) 773-0750  
Fax (805) 773-0751

\*All correspondence must  
be sent to Salinas Office

Of Counsel - Santa Maria

RICHARD C. BRENNEMAN  
brenneman@bjalaw.net  
Tel. (805) 922-4553  
Fax (805) 928-7262

Via Facsimile and U. S. Mail

Ivan C. Jen, Esq.  
Murray & Murray  
19400 Stevens Creek Blvd., Ste. 200  
Cupertino, California 95014-2548

Fresh 'N Healthy, Inc.  
P.O. Box 2317  
Hollister, CA 95024

Re: Oceano Packing Company, LLC v. Fresh 'N Healthy

Dear Mr. Jen:

This firm has been retained to represent Oceano Packing Company, LLC ("Oceano") in an action against Fresh 'N Healthy, Inc. and other individuals and legal entities (collectively "Fresh") to recover sums owing to Oceano. I received your letter dated January 16, 2008 addressed to Oceano, in which you requested that Oceano notify Fresh of the amount of Oceano's claim and any basis for Oceano's claim of priority.

Enclosed herewith is a copy Oceano's final demand for payment dated January 16, 2008 (the "Demand"), which was separately served on Fresh. The Demand, together with this letter, serves as Oceano's response to your request that Oceano notify Fresh of the amount of its claim against Fresh and the basis for Oceano's claim of priority.

Please feel free to contact me with any questions or concerns.

ANASTASSIOU & ASSOCIATES

By:

  
Scott J. Allen, Esq.

Enclosures.

cc: Oceano Packing  
F:\OCA\Fresh 'N Healthy\1.22.08 letter to Jen re Paca claim.wpd

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Attorneys at Law



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brenneman@bjalaw.net  
Tel. (805) 922-4553  
Fax (805) 928-7262

January 16, 2008

By Telecopy/Mail/and/orEmail

**To: Mr. David Ferrec  
Comerica Bank**

**At: 333 W. Santa Clara St.  
San Jose, CA 95113**

**To: CT Corporation System  
Registered Agent for Comerica Bank**

**At: 818 West Seventh Street  
Los Angeles, CA 90017**

**To: Comerica Bank Corporate Legal Department**

**At: Comerica Tower at Detroit Center  
500 Woodward Avenue, MC 3391  
Detroit, Michigan 48226**

**To: Robert Edward Izmirian, Esq.  
Attorney for Comerica Bank**

**At: Buchalter Nemer  
333 Market Street, 25<sup>th</sup> Floor  
San Francisco, CA 94105**

**To: Mr. Mark Williams  
Fresh 'N Healthy, Inc.**

**At: P. O. Box 2317  
Hollister, CA 95024**

**To: Mr. Jack Parson  
Fresh 'N Healthy, Inc.**

**At: 19065 Portola Drive, Suite P  
Salinas, CA 93908**



**To:** Mr. Steven A. Cinelli  
Fresh 'N Healthy, Inc.  
**At:** P. O. Box 2317  
Hollister, CA 95024

**RE: Final Demand for Payment**  
**PACA Trust Claim for Oceano Packing Co., LLC ("Oceano")**

Dear Gentlemen:

I am the attorney for Oceano Packing Company, LLC., a California corporation ("Oceano Packing"). This letter constitutes a final demand for payment owed to my client for produce sold to Fresh 'N Healthy, Inc. ("Fresh 'N Healthy").

This demand is being made to Comerica Bank, the lender to Fresh 'N Healthy, and to the responsibly connected individuals to Fresh 'N Healthy named above, as my client has reason to believe that one or more of you have received PACA trust assets from Fresh 'N Healthy which should be used to pay my client, as set forth in detail below.

In addition, the responsibly connected individuals to Fresh 'N Healthy are being notified of this claim because under PACA they are secondarily liable for any failure of Fresh 'N Healthy to pay its debts to PACA creditors. See Sunkist Growers, Inc. v. Fisher, 104 F.3d 280, 284 (9<sup>th</sup> Cir. 1997), citing Shepard v. K.B. Fruit & Vegetable, Inc., 868 F. Supp. 703, 706 (E.D. Pa. 1994).

As you are aware, Oceano sold to Fresh 'N Healthy various orders of produce (the "Produce") during the calendar year 2007, pursuant to the terms of several Oceano invoices (the "Invoices"), copies of which are attached hereto as Exhibit A for reference, together with the summary prepared by Oceano of the status of the account of Fresh 'N Healthy as of January 11, 2008 ("AR Customer Account Detail"). By their terms, the Invoices required payment within 25 days of the date of each Invoice. All of the Produce was delivered to, and accepted by, Fresh 'N Healthy. Oceano preserved its PACA trust rights with respect to the proceeds derived from the sale of the Produce by giving the PACA statutory trust notice on each of its Invoices, as shown in Exhibit A.

Currently, a total of \$101,127.39 is outstanding on the Invoices, as shown on the AR Customer Account Detail. My client has made repeated requests for payment of the Invoices to Fresh 'N Healthy, which requests have been ignored up to the present time.

My client has now learned that earlier this month, Fresh 'N Healthy shut down its business and is now in the process of liquidating all of its assets. We have learned that the assets that are being sold in liquidation by Fresh 'N Healthy, and the accounts receivable that are being collected by Fresh 'N Healthy, are being used to pay debts owed to Comerica Bank and/or to the principals of Fresh 'N Healthy, rather than to pay the PACA debts owed to Oceano. Further, we have reason to believe that prior to the closing of its business, Fresh 'N Healthy distributed PACA trust assets to Comerica Bank and/or to the responsibly connected individuals to Fresh 'N Healthy. If this is in fact the case, such actions would constitute a diversion of PACA trust assets in violation of

applicable law.

The law provides that all of the assets of Fresh 'N Healthy which were PACA trust assets never became property of the estate of Fresh 'N Healthy because they are an equitable interest, and are subject to immediate turnover to the PACA claim holder. Equitable interests for the benefit of others are not part of the debtor's estate. See 11 U.S.C. § 541(d); Mid-Atlantic Supply, Inc. Of Virginia v. Three Rivers Aluminum Co., 790 F.2d 1121 (4<sup>th</sup> Cir. 1986); In re Super Spud, 77 B.R. 930, 931 (Bankr. M.D. Fla 1987); In re Southland & Keysone, 132 B.R. 632 (9<sup>th</sup> Cir. BAP 1991); In re Milton Poulos, Inc., 947 F.2d 1351 (9<sup>th</sup> Cir. 1991); and In re Carolina Produce Distributors, Inc., 110 B.R. 207 (Bankr. W.D. N.C. 1990).

The beneficiary of a PACA trust is entitled to priority as to all PACA trust assets of the debtor Fresh 'N Healthy, ahead of administrative expenses, claims for attorneys' fees, and all claims of creditors, including those with valid security interests. See In re Super Spud, supra at 932; Tom Lange Co. V. Lombardo Fruit & Produce Co., 12 F. 3d 806, 809 (8<sup>th</sup> Cir. 1993); and In Re San Joaquin Food Serv., Inc., 958 F.2d 938, 939 (9<sup>th</sup> Cir. 1992).

Someone who receives trust funds (such as Comerica Bank, the secured lender), knowing that there has been a breach of trust, does so at his peril. Only a bona fide purchaser for value without notice of the breach of trust may keep trust funds so transferred. See Consumers Produce Co., Inc. v. Volante Wholesale Produce, Inc., 16 F.3d 1374, 1380 (3<sup>rd</sup> Cir. 1984). Lenders with actual or constructive knowledge of a PACA trust are not bona fide purchasers and must refund any monies they receive in violation of the PACA trust. Such knowledge is imputed when the lender has a lien on PACA trust property and the lender knows that the debtor was engaged in the sale of perishable agricultural commodities. In re Richmond Produce Co., Inc., 112 B.R. 364, 377-378 (Bankr. N.D. CA 1990). In such circumstances, a debtor's secured lender is required to disgorge monies which the debtor paid in reduction of its debt to the secured lender, which monies are then used for the benefit of PACA trust beneficiaries. See In re Al Nagelberg & Co., 84 B.R. 19, 21-22 (Bankr. S.D. N.Y. 1988).

The assets which are considered to be a part of the PACA trust, and which are not part of a debtor's estate, are extensive. First, the PACA trust contains all inventories of food or other products derived from perishable commodities, and any receivables or proceeds from the sale of such commodities or products, which are to be preserved as a non-segregated floating trust, until full payment is made to the PACA creditors. See 7 U.S.C. § 499e(c)(2) and 7 C.F.R. § 46.46(c).

The establishment of this PACA trust occurs upon the commencement of the debtor's buying and selling of produce, and exists continuously throughout the life of the debtor's business, until all PACA creditors are paid in full. It does not matter whether the PACA trust beneficiary (here Oceano), or another produce seller, was the source of the inventory or proceeds; the PACA trust applies continuously to all inventories and proceeds. No tracing of assets is required. See In re Kornblum & Co., Inc., 81 F.3d 280, 286 (2<sup>nd</sup> Cir. 1995); In re Atlantic Tropical Market Corp., 118 B.R. 139, 142 (Bankr. S.D. Fla 1990); In re Milton Poulos, Inc., supra; and Frio Ice, S.A. v. Sunfruit, Inc., 918 F.2d 154, 156 (11<sup>th</sup> Cir. 1990).

Further, if a debtor uses PACA trust assets to acquire or make payments on another asset (such as real estate or equipment), without maintenance of a reserve sufficient to satisfy all unpaid PACA creditors, such an action constitutes an unlawful dissipation of PACA trust assets, and the acquired asset then also becomes a part of the PACA trust. See In re Al Nagelberg & Co., supra. The courts have also recognized that since "it is usually impossible for a PACA seller to trace the origin of disputed assets...the burden of tracing the source of funds [is] on the purchaser of agricultural commodities subject to PACA." Tony Vitrano Co. V. National Produce Co., Inc., 815 F. Supp. 23, 25 (D.C. 1993). In Tony Vitrano Co., the court found that real estate purchased by the debtor was subject to the PACA trust, since there was no competent evidence produced to show that no PACA trust money was used to make payments on the real estate.

In the case of In re Kornblum & Co., Inc., supra, at 287, the PACA creditors sought to obtain the proceeds of the sale of the debtor's leasehold interests in store and office units, on the basis that these units constituted property of the PACA trust. The court held that the proceeds would constitute part of the PACA trust, unless the debtor established "either that (1) no PACA trust existed when the Units were purchased; (2) even though a PACA trust existed at that time, the Units were not purchased with trust assets; or (3) although a PACA trust existed when the Units were purchased and the Units were purchased with trust assets, [the debtor] thereafter paid all unpaid sellers in full prior to the transactions involving the Creditors, thereby terminating the trust." The debtor had the burden to establish such facts. See also Sanzone-Palmisano Co. V. Seaman Enterprises, 986 F.2d 1010, 1014 (6<sup>th</sup> Cir. 1993), "[a]ll of the seized assets that cannot be traced to a non-trust source are part of the [PACA] trust res."

Applying the foregoing principles of law to this case, it is clear that Fresh 'N Healthy was involved in the business of buying and selling produce throughout its existence, and thus it is likely that all monies it received from the operation of its business were the subject of the PACA trust. Therefore, any loan payments that Comerica Bank (the secured lender) received which arose from Fresh 'N Healthy's business revenues, or from Fresh 'N Healthy's accounts receivable, would clearly be a part of the PACA trust and recoverable from Comerica Bank. Further, Fresh 'N Healthy's equipment would also constitute assets of the PACA trust, unless it is shown that such equipment was purchased solely through the use of non-PACA sourced funds, and that no payments were made on the equipment using PACA sourced funds. Therefore, the proceeds from the sale of any equipment being liquidated by Fresh 'N Healthy would also be the subject of the PACA trust.

In order to promptly resolve this matter, my client has authorized me to make a final demand to Comerica Bank and to the responsibly connected individuals named above for payment of \$101,127.39 by January 23, 2008. Please be advised that if Oceano's settlement offer is not accepted by the due date, my client has instructed me to file suit to collect the money owed to Oceano against all of the entities and persons to whom this letter is addressed, plus any other persons who we may determine may be responsibly connected to Fresh 'N Healthy, or to have improperly received PACA trust funds. If a law suit is filed, my client will seek to obtain the costs of suit and attorney's fees, plus additional interest/service charges which may accrue to the date of judgment. Thus, the judgment that will be obtained in court will be substantially more than the amount of \$101,127.39 currently requested to resolve and terminate this matter.

Please be further advised that today my client sent out for filing an Informal PACA Complaint against Fresh 'N Healthy with the USDA, AMS, F & V Programs PACA Branch in Tucson, Arizona. You have been provided a copy of this filing under separate cover. Of course, my client will immediately withdraw its Informal PACA Complaint if its settlement demands are met.

Please deliver a certified check or cashier's check for \$101,127.39 made payable to Oceano Packing Co., LLC, to my law office located at 242 Capitol Street, Salinas, CA 93901 (courier address), or to P. O. Box 2210, Salinas, CA 93902 (mailing address), on or before January 23, 2008. If I do not receive the check by that date, then Oceano will have no choice but to pursue its rights in litigation.

A legal assistant from my office will be following up with you to determine your intentions with respect to payment.

Very truly yours,

ANASTASSIOU & ASSOCIATES

By: 

Effie F. Anastassiou  
Attorney for  
Oceano Packing Co., LLC.

Enclosure

cc: Oceano Packing Co., LLC

F:\OCA\Fresh 'N Healthy\DemandLetterFreshNHealthy.wpd

# EXHIBIT A



01/11/2008 13:28 FAX 8054890101

PHELAN&amp;TAYLOR

002

**Age Analysis by Customer/Ship Date**  
OCEANO PACKING COMPANY LLC

Ship Date	Order No.	Cust PO	Slip/Prn	Pay Terms	Sale Terms	Hold	Inv Amt	Rcpt Amt	Balance	Days
FRESH 'N HEALTHY FARMS			F020	Phone: (800) 801-6600 EXT 22	Credit Limit Amt: .00					
									Credit Limit Days: 0	
Jun 25, 2007	100425		OCEANO P 25 DAYS	FOB	No		19,832.77	7,350.28	12,482.49	201
Jun 26, 2007	100426		OCEANO P 25 DAYS	FOB	No		21,728.39	.00	21,728.39	200
Jun 30, 2007	100443		OCEANO P 25 DAYS	FOB	No		12,558.17	1,102.24	11,455.93	198
Jul 02, 2007	100429		OCEANO P 25 DAYS	FOB	No		18,348.43	.00	18,348.43	194
Nov 14, 2007	417	417	OCEANO P 25 DAYS	FOB	No		20,023.15	.00	20,023.15	59
Nov 19, 2007	423	423	OCEANO P 25 DAYS	FOB	No		17,089.00	.00	17,089.00	54
Total: FRESH 'N HEALTHY FARMS							109,579.91	8,452.52	101,127.39	
Grand Total:							109,579.91	8,452.52	101,127.39	
Number of Invoices: 6										

01/11/2008 13:29 FAX 8054890181

PHELAN&amp;TAYLOR

003

OCEANO PACKING COMPANY LLC  
P.O. BOX 929  
OCEANO CA 93475-0929

**INVOICE**

Invoice #: 100425  
Invoice: Jun 25, 2007  
Ship: Jun 25, 2007  
Pay Terms: 25 DAYS

Sold To: FRESH 'N HEALTHY FARMS  
P.O. BOX 2317  
HOLISTER CA 95024

Ship To: FRESH 'N HEALTHY FARMS  
1600 CIATION WAY  
HOLISTER CA 95024

Page 1 of 1

Sale Terms: FOB	Salesperson: OCEANO PACKING	Carrier:
Order: Jun 25, 2007	Via: Truck	Trailer lic:
Cust PO:	Currency: USD	Broker:
		St:

Description	Quantity	UOM	Quantity	UOM	Price	Amount
TOTE ORGANIC BABY	320	tote	5186	lb	1.03	5,341.58
GREEN ROMAINE TOTE F'N HEALTHY ORG 35'S	104	tote	1688	lb	1.08	1,823.04
MIZUNA TOTE F'N HEALTHY ORG 35'S	156	tote	2527	lb	1.08	2,729.16
RED OAK TOTE F'N HEALTHY ORG 35'S	80	tote	1296	lb	1.08	1,399.68
RED ROMAINE TOTE F'N HEALTHY ORG 35'S	80	tote	1296	lb	1.08	1,399.68
TANGO TOTE F'N HEALTHY ORG 35'S	200	tote	3240	lb	1.08	3,499.20
GREEN OAKS TOTE F'N HEALTHY ORG 35'S	208	tote	3370	lb	1.08	3,639.60
PRICE ADJUSTMENT			18603			.83
INVOICE TOTAL:	1148		18603			19,832.77

RECEIVING TICKET # 29384 (NO PO NUMBER)

There will be a 1 1/2% per month (effective 18% per annum) service charge on all accounts 30 days past due.

CDFA # 40-0749

**Please return a copy of this invoice with your remittance - Thank You**

The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(b) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.

01/11/2008 13:28 FAX 8054890181

PHELAN&amp;TAYLOR

004

OCEANO PACKING COMPANY LLC  
P.O. BOX 929  
OCEANO CA 93475-0929

**INVOICE**

Invoice #: 100426  
Invoice: Jun 26, 2007  
Ship: Jun 26, 2007  
Pay Terms: 25 DAYS

Sold To: FRESH 'N HEALTHY FARMS  
P.O. BOX 2317  
HOLISTER CA 95024

Ship To: FRESH 'N HEALTHY FARMS  
1600 CIATION WAY  
HOLISTER CA 95024

Page 1 of 1

Sale Terms: FOB	Salesperson: OCEANO PACKING	Carrier:	
Order: Jun 26, 2007	Via: Truck	Trailer lic:	St:
Cust PO:	Currency: USD	Broker:	

Description	Quantity	UOM	Quantity	UOM	Price	Amount
TOTE ORGANIC BABY	520	tote	7878	lb	1.03	8,114.34
GREEN ROMAINE TOTE F'N HEALTHY ORG 35'S	104	tote	1576	lb	1.08	1,702.08
MIZUNA TOTE F'N HEALTHY ORG 35'S	156	tote	2363	lb	1.08	2,552.04
RED OAK TOTE F'N HEALTHY ORG 35'S	156	tote	2363	lb	1.08	2,552.04
TANGO TOTE F'N HEALTHY ORG 35'S	208	tote	3152	lb	1.08	3,404.16
RED ROMAINE TOTE F'N HEALTHY ORG 35'S	104	tote	1576	lb	1.08	1,702.08
REDINA TOTE F'N HEALTHY ORG 35'S	104	tote	1576	lb	1.08	1,702.08
PRICE ADJUSTMENT						
INVOICE TOTAL:			20484			-43
	1352		20484			21,728.39

REC TICKET # 29389 ( NO PO #) 6/26/07

There will be a 1 1/2% per month (effective 18% per annum) service charge on all accounts 30 days past due.

CDFA # 40-0749

**Please return a copy of this invoice with your remittance - Thank You**

The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.

01/11/2008 13:28 FAX 8054880191

PHELAN&amp;TAYLOR

005

OCEANO PACKING COMPANY LLC  
P.O. BOX 929  
OCEANO CA 93476-0929

**INVOICE**

Invoice #: 100443

Invoice: Jun 30, 2007

Ship: Jun 30, 2007

Pay Terms: 25 DAYS

Sold To: FRESH 'N HEALTHY FARMS  
P.O. BOX 2317  
HOLISTER CA 95024

Ship To: FRESH 'N HEALTHY FARMS  
1600 CIATION WAY  
HOLISTER CA 95024

Page 1 of 1

Sale Terms: FOB	Saleperson: OCEANO PACKING	Carrier:
Order: Jun 30, 2007	Via: Truck	Trailer lic:
Cust PO:	Currency: USD	Broker:
		St:

Description	Quantity	UOM	Quantity	UOM	Price	Amount
TOTE F'N HEALTHY ORG 35'S BABY	1044	tote	12192	lb	1.03	12,557.76
PRICE ADJUSTMENT			12192			.41
INVOICE TOTAL:	1044		12192			12,558.17

**Please return a copy of this invoice with your remittance - Thank You**

The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.



01/11/2008 13:29 FAX 8054890191

PHELAN&amp;TAYLOR

006

OCEANO PACKING COMPANY LLC  
P.O. BOX 929  
OCEANO CA 93475-0929

**INVOICE**

Invoice #: 100429  
Invoice: Jul 02, 2007  
Ship: Jul 02, 2007  
Pay Terms: 25 DAYS

Sold To: FRESH 'N HEALTHY FARMS  
P.O. BOX 2317  
HOLISTER CA 95024

Ship To: FRESH 'N HEALTHY FARMS  
1600 CIATION WAY  
HOLISTER CA 95024

Page 1 of 1

Sale Terms: FOB	Salesperson: OCEANO PACKING	Carrier:	
Order: Jul 02, 2007	Via: Truck	Trailer lic:	St:
Cust PO:	Currency: USD	Broker:	

Description	Quantity	UOM	Quantity	UOM	Price	Amount
TOTE F'N HEALTHY ORG 35'S BABY	728	tote	9379	lb	1.03	9,660.37
GREEN ROMAINE TOTE F'N HEALTHY ORG 35'S	104	tote	1345	lb	1.08	1,452.60
MIZUNA TOTE F'N HEALTHY ORG 35'S	104	tote	1340	lb	1.08	1,447.20
TANGO TOTE F'N HEALTHY ORG 35'S	208	tote	2680	lb	1.08	2,894.40
GREEN OAKS TOTE F'N HEALTHY ORG 35'S	104	tote	1340	lb	1.08	1,447.20
ARUGULA TOTE F'N HEALTHY ORG 35'S	104	tote	1340	lb	1.08	1,447.20
PRICE ADJUSTMENT			17424			-54
INVOICE TOTAL:	1352		17424			18,348.43

There will be a 1 1/2 % per month (effective 18% per annum) service charge on all accounts 30 days past due.  
CDFA # 40-0749

**Please return a copy of this invoice with your remittance - Thank You**

The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 489e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.

01/11/2008 13:29 FAX 8054890181

PHELAN&amp;TAYLOR

007

OCEANO PACKING COMPANY LLC  
P.O. BOX 929  
OCEANO CA 93475-0929

## INVOICE

Invoice #: 417  
Invoice: Nov 14, 2007  
Ship: Nov 14, 2007  
Pay Terms: 25 DAYS

Sold To: FRESH 'N HEALTHY FARMS  
P.O. BOX 2317  
HOLISTER CA 95024

Ship To: FRESH 'N HEALTHY FARMS  
1600 CIATION WAY  
HOLISTER CA 95024

Page 1 of 1

Sale Terms: FOB  
Order: Nov 14, 2007  
Cust PO: 417

Salesperson: OCEANO PACKING  
Via: Truck  
Currency: USD

Carrier: PETTERVILLE  
Trailer lic: 9D19774  
Broker:

St: CA

Description	Quantity	UOM	Quantity	UOM	Price	Amount
TOTE ORGANIC 40'S BABY	480	tote	8570	lb	1.15	9,855.50
GREEN ROMAINE TOTE ORGANIC 40'S	120	tote	1835	lb	1.15	2,110.25
LOLLA ROSSA TOTE ORGANIC 40'S	40	tote	520	lb	1.15	598.00
MIZUNA TOTE ORGANIC 40'S	120	tote	1575	lb	1.15	1,811.25
RED ROMAINE TOTE ORGANIC 40'S	80	tote	832	lb	1.15	956.80
REDINA TOTE ORGANIC 40'S	80	tote	1159	lb	1.15	1,332.85
RED CHARD TOTE ORGANIC 40'S	120	tote	1714	lb	1.15	1,971.10
TANGO TOTE ORGANIC 40'S	80	tote	1186	lb	1.15	1,363.90
TEMPERATURE RECORDER					23.50	23.50
INVOICE TOTAL:	1120		17391			20,023.15

CDFA # 40-0749

There will be a 1 1/2% per month (effective 18% per month) service charge on all accounts 30 days past due.

**Please return a copy of this invoice with your remittance - Thank You**

The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499e(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.

01/11/2008 13:29 FAX 8054890101

PHELAN&amp;TAYLOR

008

OCEANO PACKING COMPANY LLC  
P.O. BOX 829  
OCEANO CA 93475-0929

## INVOICE

Invoice #: 423

Invoice: Nov 19, 2007

Ship: Nov 19, 2007

Pay Terms: 25 DAYS

Sold To: FRESH 'N HEALTHY FARMS  
P.O. BOX 2317  
HOLISTER CA 95024

Ship To: FRESH 'N HEALTHY FARMS  
1600 CIATION WAY  
HOLISTER CA 95024

Page 1 of 1

Sale Terms: FOB	Salesperson: OCEANO PACKING	Carrier:	
Order: Nov 19, 2007	Via: Truck	Trailer lic:	St:
Cust PO: 423	Currency: USD	Broker:	

Description	Quantity	UOM	Quantity	UOM	Price	Amount
TOTE ORGANIC BABY	480	tote	8916	lb	1.15	10,253.40
LOLLA ROSSA TOTE ORGANIC 40'S	80	tote	1486	lb	1.15	1,708.90
RED ROMAINE TOTE ORGANIC 40'S	80	tote	1486	lb	1.15	1,708.90
REDINA TOTE ORGANIC 40'S	80	tote	1486	lb	1.15	1,708.90
RED CHARD TOTE ORGANIC 40'S	80	tote	1486	lb	1.15	1,708.90
INVOICE TOTAL:	800		14860			17,089.00

CDFA 40-0749

There will be a 1 1/2% per month (effective 18% per annum) service charge on all accounts 30 days past due.

**Please return a copy of this invoice with your remittance - Thank You**

The perishable agricultural commodities listed on this invoice are sold subject to the statutory trust authorized by section 5(c) of the Perishable Agricultural Commodities Act, 1930 (7 U.S.C. 499a(c)). The seller of these commodities retains a trust claim over these commodities, all inventories of food or other products derived from these commodities, and any receivables or proceeds from the sale of these commodities until full payment is received.

01/11/2008 13:28 FAX 8054890191

PHELAN&TAYLOR

001

***OCEANO PACKING COMPANY LLC***  
***P.O. BOX 929***  
***OCEANO, CA 93475***  
***(805) 489-3303***  
***(805) 489-0191 FAX***

To: Effie

Company: <sup>831</sup>~~813~~-754-0621

From the desk of: Cathy

(805) 489-3303



# **EXHIBIT D**

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Attorneys at Law



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Pismo Beach, CA\*  
Tel. (805) 773-0750  
Fax (805) 773-0751

\*All correspondence must  
be sent to Salinas Office

Of Counsel - Santa Maria

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brenneman@bjalaw.net  
Tel. (805) 922-4553  
Fax (805) 928-7262

February 8, 2008

**Via Facsimile & U.S. Mail**

Steve O'Neill, Esq.  
Murray and Murray  
19400 Stevens Creek Blvd., Suite 200  
Cupertino, CA 95014

**Re: PACA Claim**  
**Our Client: Oceano Packing Company**

Dear Counsel:

This firm represents Oceano Packing Company, LLC ("Oceano"), which has a PACA claim for monies owed from the sale of perishable commodities against Fresh 'N Healthy, Inc. ("Fresh"), among others, which it has filed with the U.S.D.A. PACA Branch as an informal Complaint, but which has not yet been filed as a lawsuit in U.S. District Court.

This letter confirms my conversation with Steve O'Neill, Fresh's counsel, of earlier today in which Mr. O'Neill stated that Fresh would most likely be filing bankruptcy in the near future. Based on Mr. O'Neill's representations, Oceano has not yet filed a PACA lawsuit of its own in U.S. District Court, or attempted to intervene in any pending lawsuit against Fresh, prior to the commencement of the bankruptcy, because the lawsuit would end up being subject to the automatic stay created by the bankruptcy filing. If Fresh does not intend to file bankruptcy, please notify this firm immediately. We would like to have a written response regarding Fresh's intentions with respect to a bankruptcy filing on or before February 15, 2008, in order to protect our client's interests.

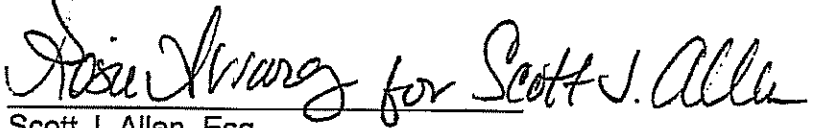
Further, Oceano is aware of the preliminary injunction (the "PI"), dated January 29, 2008, issued against Fresh and others in the U.S. District Court case styled ASA Farms.

Inc. v. Fresh 'N Healthy, Inc., N.D.Cal. case number C08-00122. It is Oceano's position that the PI protects all PACA claimants, including Oceano. If Fresh or any other party intend to take, or agree to, any action that is not authorized by the PI, please notify this firm immediately so that Oceano can take appropriate action to protect its interests.

If you have any questions or concerns regarding these matters, please feel free to call Effie Anastassiou or myself. Otherwise we look forward to hearing from you by February 15, 2008.

Sincerely,

Anastassiou & Associates

  
Scott J. Allen, Esq.

Attorneys for Oceano Packing Company, LLC

cc: Kelly Sutherland, Esq. (Attorney for ASA Farms Inc., and Braga Ranch)  
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San Francisco, CA 94105

Terry O'Connor, Esq. (Attorney for Jack Parson, an Individual)  
Noland Hamerly Etienne & Hoss  
P.O. Box 2510  
Salinas, CA 93902

Oceano Packing Company, LLC

F:\OCA\Fresh 'N Healthy\2.08.08 Steve O'Neill.wpd